

# **AMENDED CERTIFICATE OF TRUST**

**THIS AMENDED CERTIFICATE OF TRUST** ("Amended Certificate of Trust") is effective as of July 17, 2001 and is among (i) **NANCY B. SMITH** ("Grantor"), (ii) **FRANK P. SMITH, JR.** AS TRUSTEE UNDER THE **NANCY B. SMITH IRREVOCABLE GRANTOR RETAINED ANNUITY TRUST DATED AUGUST 6, 1993** (the "GRAT Trustee") and (iii) **FRANK P. SMITH, JR. AND GREGORY L. SMITH AS CO-TRUSTEES UNDER THE SPOUSE'S TRUST ESTABLISHED UNDER THE NANCY B. SMITH IRREVOCABLE GRANTOR RETAINED ANNUITY TRUST DATED AUGUST 6, 1993** (the "Trustees").

## **RECITALS:**

**A.** On August 6, 1993, Grantor, as grantor, and the GRAT Trustee, as Trustee, entered into the Nancy B. Smith Irrevocable Grantor Retained Annuity Trust Agreement (the "Trust Agreement"). The terms of the Trust Agreement were evidenced by a Certificate of Trust dated July 22, 1993, which is of record in Book 65, Page 371 in the official records of DeSoto County, Mississippi ("Certificate of Trust").

**B.** The Certificate of Trust incorrectly identified the date of the Nancy B. Smith Irrevocable Grantor Retained Annuity Trust dated August 6, 1993 (the "GRAT") as July 2, 1993.

**C.** Paragraph 2.1 of the Trust Agreement created the GRAT for the sole benefit of Nancy B. Smith until August 6, 2001 (the "GRAT Termination Date"). Upon termination of the GRAT, the Trust Agreement required that the assets held by the GRAT as of the GRAT Termination Date, including that certain real property located in DeSoto County, Mississippi and described on the attached Exhibit A which is incorporated herein by reference, be distributed to the Spouse's Trust (the "Spouse's Trust") established under Paragraph 2.2 of the Trust Agreement.

**D.** Pursuant to paragraph 3.1(n) of the Trust Agreement, the GRAT joins in this Amended Certificate of Trust to (1) facilitate the transfer of assets to the Spouse's Trust and (2) consent to the amendment of the Certificate of Trust.

**E.** In accordance with Paragraph 3.4 of the Trust Agreement, Frank P. Smith, Jr., Grantor's spouse, and Gregory L. Smith are the co-trustees of the Spouse's Trust.

**F.** This Amended Certificate of Trust is intended to amend the Certificate of Trust to reflect the changes and corrections described above.

**1. EFFECTIVE DATE OF AMENDMENT.** This Amended Certificate of Trust shall be effective as of the date first written above.

**2. NAME OF TRUST.** The name of the trust is the Spouse's Trust established under the Nancy B. Smith Irrevocable Grantor Retained Annuity Trust dated August 6, 1993.

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**3. ADDRESS OF GRANTOR.** The address of the Grantor is 500 Dogwood Road, Hurricane Mills, Tennessee 37078.

**4. ADDRESS OF TRUSTEES.** The addresses of the Trustees are 500 Dogwood Road, Hurricane Mills, Tennessee 37078 for Frank P. Smith, Jr. and 2000 Southmeadow Lane, Lake Forest, Illinois 60045 for Gregory L. Smith.

**5. DATE OF EXECUTION OF TRUST.** The GRAT established the Spouse's Trust on August 6, 1993.

**6. DATE OF TERMINATION OF TRUST.** The Spouse's Trust will terminate upon the death of Grantor's spouse, Frank P. Smith, Jr.

**7. SUCCESSOR TRUSTEES.** If Grantor's spouse fails or ceases to act as a trustee of the Spouse's Trust at any time, because of Grantor's spouse's death, disability, resignation or for any other reason, Grantor's spouse's co-trustee shall be the only trustee of that trust, unless Grantor's spouse shall designate a different trustee or trustees, in which event that designation shall prevail hereunder. If a trustee of the Spouse's Trust, other than Grantor's spouse, ceases to act as its trustee any time, because of that trustee's death, disability, resignation or for any other reason, Grantor's spouse shall immediately appoint a successor trustee. Grantor's spouse may at any time, and from time to time, during the existence of the Spouse's Trust, remove the trustee of that trust and appoint a successor trustee. The co-trustees of the Spouse's Trust shall act, or delegate the authority to act (either between themselves or to third parties), by unanimous agreement, but Grantor's spouse shall have no voice in exercising any discretion over encroachments upon principal of the Spouse's Trust, which shall be exercised solely by Grantor's spouse's co-trustee.

**8. TRUSTEES' POWERS.** In administering the Spouse's Trust, the Trustees shall have all of the trustee powers and discretions conferred upon such trustees by the laws of the state of their residence, as well as any powers that are conferred upon the Trustees by the Trust Agreement. Without limiting the generality of this grant, the Trustees shall expressly have the following powers as set forth in Paragraph 4.1 of the Trust Agreement:

(a) To sell, exchange, assign, transfer and convey, with or without warranty, any security or property, real or personal, held in any trust, at public or private sale, at such time and price and upon such terms and conditions (including credit) as the trustee may deem advisable.

(b) To invest and reinvest in such stocks, bonds and other securities and properties as the trustee may deem advisable, including, but not limited to, real estate.


(c) To employ a licensed real estate broker or brokers in connection with the sale of real property held in any trust established hereunder, and to pay a real estate brokerage commission for services rendered by the broker or brokers effecting such sale.


(d) To make, execute and deliver all contracts, deeds, assignments, insurance contracts, powers and other instruments, and to perform, in general, any and all matters for the preservation and management of any trust assets which the trustee may deem advisable.


(e) To lease any real estate (with or without the privilege of purchase) for such term or terms and upon such conditions and rentals and in such manner as the trustee may deem advisable, including any lease for the exploration or removal of minerals or other natural resources, and any lease so made shall be valid and binding for the full term thereof even though it shall extend beyond the duration of any trust; to make ordinary or extraordinary repairs, replacements and improvements, structural or otherwise, to any such real estate; to subdivide or develop real estate, to dedicate it to public use and to grant easements as the trustee may deem proper; and to set aside income for a depreciation or depletion reserve as the trustee may deem advisable.

(f) To borrow such amount or amounts of money (from the trustee individually or from any other person, firm or corporation) upon such terms and conditions as the trustee may deem advisable for the purpose of doing or carrying out any of the powers, authorities and purposes hereunder; to give secured or unsecured notes therefor with or without powers of attorney to confess judgment; and to secure the payment of such loan or loans by a pledge or mortgage of any or all of the trust assets.

IN WITNESS WHEREOF, Grantor, the GRAT Trustee and the Trustees have executed this Amended Certificate of Trust this 17 day of July, 2001.

  
NANCY B. SMITH

  
FRANK P. SMITH, JR. AS TRUSTEE OF THE  
NANCY B. SMITH IRREVOCABLE GRANTOR  
RETAINED ANNUITY TRUST DATED  
AUGUST 6, 1993

  
FRANK P. SMITH, JR. AS CO-TRUSTEE OF  
THE SPOUSE'S TRUST ESTABLISHED UNDER  
THE NANCY B. SMITH IRREVOCABLE  
GRANTOR RETAINED ANNUITY TRUST  
DATED AUGUST 6, 1993

Gregory L. Smith  
GREGORY L. SMITH AS CO-TRUSTEE OF  
THE SPOUSE'S TRUST ESTABLISHED UNDER  
THE NANCY B. SMITH IRREVOCABLE  
GRANTOR RETAINED ANNUITY TRUST  
DATED AUGUST 6, 1993

STATE Tennessee )  
 ) SS:  
COUNTY Humphreys )

The foregoing instrument was acknowledged before me, a notary public in and for said state and county, this 17<sup>th</sup> day of July, 2001 by NANCY B. SMITH.

My commission expires: 12-16-03

Charles A. Burns  
NOTARY PUBLIC

STATE Tennessee )  
 ) SS:  
COUNTY Humphreys )

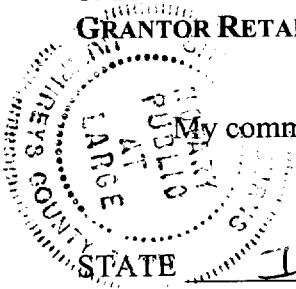
The foregoing instrument was acknowledged before me, a notary public in and for said state and county, this 17<sup>th</sup> day of July, 2001 by FRANK P. SMITH, JR. AS TRUSTEE UNDER THE NANCY B. SMITH IRREVOCABLE GRANTOR RETAINED ANNUITY TRUST DATED AUGUST 6, 1993.

My commission expires: 12-16-03

Charles A. Burns  
NOTARY PUBLIC

STATE Tennessee )  
 ) SS:  
COUNTY Humphreys )

The foregoing instrument was acknowledged before me, a notary public in and for said state and county, this 17<sup>th</sup> day of July, 2001 by **FRANK P. SMITH, JR. AS CO-TRUSTEE UNDER THE SPOUSE'S TRUST ESTABLISHED UNDER THE NANCY B. SMITH IRREVOCABLE GRANTOR RETAINED ANNUITY TRUST DATED AUGUST 6, 1993.**



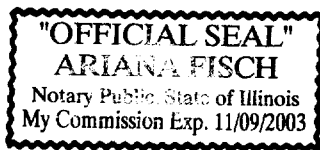
My commission expires: 12-16-03

Cheryl A. Burns  
NOTARY PUBLIC

STATE Illinois )  
 ) SS:  
COUNTY Cook )

The foregoing instrument was acknowledged before me, a notary public in and for said state and county, this 25<sup>th</sup> day of August, 2001 by **GREGORY L. SMITH AS CO-TRUSTEE UNDER THE SPOUSE'S TRUST ESTABLISHED UNDER THE NANCY B. SMITH IRREVOCABLE GRANTOR RETAINED ANNUITY TRUST DATED AUGUST 6, 1993.**

My commission expires: 11/09/03



Ariana Fisch  
NOTARY PUBLIC

The foregoing instrument was prepared by:

GREENEBAUM DOLL & McDONALD PLLC  
2800 Chemed Center  
255 East Fifth Street  
Cincinnati, Ohio 45202  
(503) 455-7600

CIN:528406.2

**EXHIBIT A**

**Legal Description of Real Property**

A 4.9125 acre, more or less, tract of land known as Lot 1 of the redivision of Lots 1 and 2 of First Revision to the Second Addition to F.P. Smith - Two Lot Subdivision (Plat Book 59, Page 50) and also located in the Northwest quarter of Section 31, Township 1 South, Range 7 West, in the City of Southaven, DeSoto County, Mississippi and being more particularly described as follows:

Beginning at a point said point being South 90°00'00" East 300.90 feet and South 00°00'00" East 202.13 feet from the Northwest corner of Section 31, Township 1 South, Range 7 West; thence North 86°44'27" East 378.56 feet along the South right-of-way line of Mississippi Highway 302 to a point; thence North 78°17'29" East 50.61 feet along said right-of-way to a point; thence South 00°02'39" East 540.88 feet to a point; thence South 89°39'21" West 406.51 feet to a point; thence North 00°20'39" West 515.91 feet to the point of beginning containing 4.9125, more or less, acres of land being subject to all codes, regulations, revisions, restrictions, easements and rights-of-way of record.

A 4.2984 acre, more or less, tract of land known as Lot 2 of the First Revision to the Second Addition to F.P. Smith - Two Lot Subdivision (Plat Book 59, Page 50), located in Section 31, Township 1 South, Range 7 West, in the City of Southaven, DeSoto County, Mississippi and being more particularly described as follows:

Beginning at the Northwest Quarter of Section 31, Township 1 South, Range 7 West; thence North 90°00'00" West, a distance of 706.84 feet to a point; thence south 00°00'00" East, a distance of 61.93 feet to a 3/8 inch iron pipe (found), said point being the true point of beginning for the herein described tract; thence North 78°17'29" East, along the South right of way line of Goodman Road, a distance of 21.60 feet to a 3/8 inch pipe (found); thence North 89°37'43" East, along the South right of way line of Goodman Road, a distance of 322.33 feet to a 3/8 inch pipe (found) at the Northwest Quarter of Lot 3 of the First Revision to the Second Addition to F.P. Smith - Two Lot Subdivision; thence South 00°20'39" East, along the West line of Lot 3, a distance of 545.28 feet to a 3/8 inch iron pipe (found) at the Southwest corner of Lot 3; thence South 89°39'21" West along the North line of Lot 7 of the Second Revision to Section "B" of Briargate Commercial Subdivision (Plat Book 57, Page 40), a distance of 343.51 feet to a 3/8 inch iron pipe (found) in the North line of Lot 7; thence North 00°20'39" West, a distance of 540.88 feet to the true point of beginning, and containing 4.2984 acres, more or less, of land being subject to all codes, covenants, regulations, revisions, restrictions, easements and rights of way of record.

A 4.38 acre, more or less, tract of land known as Lot 3 of the First Revision to the Second Addition to F.P. Smith - Two Lot Subdivision (Plat Book 59, Page 50), located in Section 31, Township 1 South, Range 7 West in the City of Southaven, DeSoto County, Mississippi and being more particularly described as follows:

Beginning at the Northwest quarter of Section 31, Township 1 South, Range 7 West, thence East a distance of 1,050.50 feet East, to a point; thence South, 55.71 feet to an iron pin (found) at the Northwest Quarter of Lot 3 of the First Revision to the Second Addition to F.P. Smith - Two Lot Subdivision, such "corner" being the true point of beginning for the herein described tract; thence South  $00^{\circ}20'39''$  East, 545.28 feet along the East line of Lot 2 of the First Revision to the Second Addition to F.P. Smith - Two Lot Subdivision, to an iron pin (found); thence North  $89^{\circ}39'21''$  East, 350.00 feet to an iron pin (found); thence North  $00^{\circ}20'39''$  West, 545.45 feet to an iron pin (found); thence South  $89^{\circ}37'43''$  West, 350.00 feet along the South right of way line of Goodman Road (MS Hwy. 302 ROW varies) to the point of beginning containing 4.38 acres, more or less, of land being subject to all codes, covenants, regulations, revisions, restrictions, easements and rights of way of record.